

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 26/7, 26/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imposition of the death sentence against former Egyptian President Mr. **Mohamed Morsi Eissa El Ayyat** and 105 other individuals on charges of having escaped from prison.

According to the information received:

On 3 July 2013, then Egyptian President Mohamed Morsi, aged 63, and his presidential team were arrested by the army following political upheaval. Following his arrest, he was reportedly detained in the premises of the Republican Guards together with his advisors. Mr. Morsi and his presidential team were not charged or referred to court during the early stages of their detention, nor were other legal basis invoked to justify their arrest at the time.

Mr. Morsi and his presidential team were detained in solitary confinement at a secret location for months without access to their families or legal counsel. They 'reappeared' at the opening of a their trial several months later.

On 13 November 2013, the Working Group on Arbitrary Detention issued its Opinion No. 39/2013 (Egypt) which considered arbitrary the detention of Mr. Morsi and of six former advisors and asked for their immediate release.

In April 2015, Mr. Morsi was sentenced to 20 years in prison on charges of having allegedly incited violence and overseen the illegal detention and torture of protesters while he was in office during clashes that occurred in front of the Presidential Palace in December 2012. His trial was reportedly unfair. His legal team appealed the decision.

On 16 May 2015, in a separate case, Mr. Morsi and 105 other defendants were recommended the death penalty by the Cairo Criminal Court for having allegedly escaped detention in January 2011. The alleged incident took place during the 2011 uprising against then President Hosni Mubarak, when Mr. Morsi was arrested and detained in Al Wadi Natrun prison and managed to escape, along with hundreds of other detainees, including members of the Muslim Brotherhood, two days after his arrest. Mr. Morsi was held in administrative detention at the time, under emergency powers and without a judicial detention order, which seems to make the charges against him for escaping prison untenable.

Reports also indicate that Mr. Morsi and his staff did not benefit from due process guarantees during the judicial process against them. His lawyer was not present during the investigations and during some of the hearings. Moreover, Mr. Morsi did not benefit from judicial oversight during his detention, since he was detained incommunicado and outside the protection of the law.

The death sentence recommended by the Cairo Criminal Court is due to be reviewed by the Grand Mufti of Egypt, a mandatory procedure under Egyptian law before a criminal court can confirm the death sentence. The Grand Mufti's opinion is non-legally binding and the court will reportedly take its final decision on the case on 2 June 2015. The defendants should have the opportunity to appeal their sentences before Egypt's highest court, the Court of Cassation.

Mr. Morsi faces further separate trials over charges of leaking documents, fraud and insulting the judiciary.

Reports indicate that the death penalty is being imposed against political opponents in Egypt. Most of those sentenced to death by courts since July 2013 have been supporters of Mr. Morsi.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our serious concern about the allegations that the death penalty was recommended following trials that did not comply with international

standards of fair trial and due process. Further concern is expressed that the death penalty may be imposed against Mr. Morsi, and other prisoners sentenced with him, on charges that do not meet the threshold of “most serious crimes” as required by international law in cases where the death penalty is imposed.

In view of the irreversibility of the punishment of the death penalty and of the allegations of unfair trial leading to the imposition of the death sentences mentioned above, we request the authorities of your Excellency’s Government as a matter of urgency to take all steps necessary **to overturn the recommendation for death sentences against the aforementioned individuals and to ensure a prompt retrial to Mr. Morsi and all the other defendants, in full compliance with international standards regarding due process, fair trial and the imposition of the death penalty.**

The above alleged facts indicate a *prima facie* violation of the rights to life and security, the right not to be arbitrarily deprived of life, and the right not to be arbitrarily deprived of their liberty, as set forth in Articles 6 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Arab Republic of Egypt on 14 January 1982, as well as Article 3 of the Universal Declaration of Human Rights (UDHR). In addition, these allegations appear to be in contravention of the right to a fair and public hearing before a competent, independent and impartial tribunal established by law, which includes the right to be assisted by a lawyer, as set forth in Articles 14 of the ICCPR and 10 of the UDHR, as well as in the Basic Principles on the Role of Lawyers. Finally, the allegations indicate a *prima facie* violation of the right to be free from torture and other cruel, inhuman and degrading treatment or punishment as set forth in Article 7 of the ICCPR and Article 2 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. In this context, we wish to refer to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/67/279 (paras. 60-61), stating that the imposition of the death penalty following an unfair trial amounts to a violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

With regards to the prolonged incommunicado detention, we wish to draw the attention of your Excellency’s Government to paragraph 27 of General Assembly Resolution 68/156; to paragraph 6 of General Comment No. 20 of the Human Rights

Committee, which states that prolonged solitary confinement may amount to acts prohibited by article 7 of the ICCPR; and to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), which states that the use of prolonged solitary confinement in itself runs afoul of this absolute prohibition and may give rise to other acts of torture or ill-treatment.

We would further like to recall that according to article 4 of General Comment 31 of the Human Rights Committee, **the obligations contained in the Covenant are binding on every State as a whole and that all branches of government** (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - **are in a position to engage the responsibility of the State Party.**

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would appreciate engaging with your Excellency's Government on the matter and obtaining your observations regarding the aforementioned allegations. In view of the urgency of the matter, the authorities of your Excellency's Government are requested to overturn the recommendation for death sentences against the aforementioned individuals and to ensure a fair retrial to all, and to safeguard their rights in compliance with international instruments.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Seong-Phil Hong
Chair-Rapporteur of the Working Group on Arbitrary Detention

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